

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH (COURT-I)  
KOLKATA**

**I.A. (IB) No. 1387/KB/2022**

**and**

**I.A. (IB) No. 1335/KB/2022**

**in**

**CP (IB) No. 565/KB/2020**

*In the matter of*

**ICICI Bank Limited**

... Financial Creditor

Versus

**Stone India Limited**

... Corporate Debtor

And

**I.A. (IB) No. 1387/KB/2022**

*An application under section 60(5) of the Insolvency and Bankruptcy Code,  
2016 read with rule 11 of the National Company Law Tribunal Rules, 2016.*

*In the matter of*

**G.S. Global Projects Private Limited**

... Applicant

Versus

**Sanjai Kumar Gupta**

... Respondent

And

**I.A. (IB) No. 1335/KB/2022**

*Application under section 30(6) for approval of Resolution Plan under section  
31(1) of the Insolvency and Bankruptcy Code, 2016 along with regulation 39(4)*

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*of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process  
for corporate Persons) Regulations, 2016.*

*In the matter of*

**Sanjai Kumar Gupta**

Resolution Professional of Stone India Limited

... Applicant

**Coram:**

Shri Rohit Kapoor : Member (Judicial)

Shri Balraj Joshi : Member (Technical)

**Appearances (via video conference):**

For the Resolution Applicant : 1. Mr. Jishnu Saha, Senior Advocate  
2. Mr. Amit Kumar Nag, Advocate  
3. Ms. Shrivalli Kajaria, Advocate

For the Resolution Professional in : 1. Mr. Rishav Banerjee, Advocate  
I.A. 1335/KB/2022 2. Mr. Rajarshi Banerjee, Advocate  
3. Mr. Sanjai Kumar Gupta, RP

For the Applicant in I.A.(IB) No. : 1. Mr. Jishnu Chowdhury, Advocate  
1387/KB/2022 2. Mr. Zeeshan Haque, Advocate  
3. Mr. Kaushik Banerjee, Advocate  
4. Ms. Rashmita Sen, Advocate  
5. Mr. Sayak Chakraborty, Advocate

For the Resolution Professional in : 1. Mr. Ratnanko Banerji, Senior  
I.A. 1387/KB/2022 Advocate  
2. Mr. Rishav Banerjee, Advocate  
3. Mr. Rajarshi Banerjee, Advocate  
4. Mr. Sanjai Kumar Gupta, RP

**Order pronounced on: 08.06.2023**

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**COMMON ORDER**

***Per: Balraj Joshi, Member (Technical)***

1. This Court convened through hybrid mode.

***Brief facts of the case***

2. The underlying Company Petition in CP (IB) No. 565/KB/2020 was filed by ICICI Bank Limited against Stone India Limited, the Corporate Debtor, under section 7 of the Insolvency and Bankruptcy Code 2016 which was admitted into Corporate Insolvency Resolution Process (“CIRP”) vide order dated 09 November 2021.
3. Initially, Mr. Mr. Kuldeep Verma was appointed as the Interim Resolution Professional (“IRP”). Subsequently, Mr. Sanjai Kumar Gupta was appointed as the Resolution Professional of the Corporate Debtor pursuant to an order dated 28 February 2022 passed in I.A. (IB) No. 40/KB/2022.
4. The IRP made public announcement on 12 November 2021 in Financial Express (*English*) (*All India edition*) and Sukhabar (*Bengali*) (*West Bengal edition*) newspapers regarding initiation of Corporate Insolvency Resolution Process and called proof of claims from the financial and operational creditors, workers and employees of the Company in the specified forms.
5. The CoC was constituted on 30 November 2021, with three Financial Creditors, being Indian Overseas Bank, ICICI Bank Limited and State Bank of India with 38.1%, 32.2% and 29.7% voting share respectively.
6. The applicant states that a total of 14 CoC meetings have been held during CIRP period.

CoC meeting	Date
1 <sup>st</sup> CoC meeting	07.12.2021
2 <sup>nd</sup> CoC meeting	13.01.2022
3 <sup>rd</sup> CoC meeting	21.01.2022
4 <sup>th</sup> CoC meeting	25.01.2022
5 <sup>th</sup> CoC meeting	08.03.2022

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6 <sup>th</sup> CoC meeting	19.04.2022
7 <sup>th</sup> CoC meeting	17.05.2022
8 <sup>th</sup> CoC meeting	31.05.2022
9 <sup>th</sup> CoC meeting	06.07.2022
10 <sup>th</sup> CoC meeting	18.08.2022
11 <sup>th</sup> CoC meeting	29.08.2022
12 <sup>th</sup> CoC meeting	03.09.2022
13 <sup>th</sup> CoC meeting	06.09.2022
14 <sup>th</sup> CoC meeting	14.09.2022

7. In terms of the provisions of section 25(2)(h) of the Code read with regulation 36A(1) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, invitations in Form 'G' for Expressions of Interest (“**EoI**”) from potential resolution applicants were issued. Form 'G' was published on 23 January 2022 for submission of resolution plans for the Corporate Debtor in Business Standard (*English*) (*All India edition*) and *Aajkal* (*Bengali*) (*West Bengal edition*) newspapers. The notice was also published on the website of the Insolvency and Bankruptcy Board of India [hereinafter referred to as “**IBBI**”].
8. In response to the invitation for EoI, upto the last date, eleven EoIs were received. The Information memorandum, evaluation matrix and request for Resolution Plan was issued to the prospective resolution applicants and the last date for submission of Resolution Plan was 28 March 2022 which was further extended to 27 April 2022. The CoC modified the RFRP concerning the amount of Performance Security and further extended the date of submission of Resolution Plans till 26 May 2022.
9. The Resolution Professional received four Resolution Plans within 26 May 2022, out of which one Resolution Plan was withdrawn. Jupiter Wagons Limited, GS Global Projects Private Limited and Lal Baba Seamless Tubes

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Private Limited submitted their Resolution Plans, which were considered by the CoC.

***I.A. (IB) No. 1387/KB/2022***

10. I.A. (IB) No. 1387/KB/2022 is an application filed by one of the Prospective Resolution Applicants viz. G. S. Global Projects Private Limited against Sanjai Kumar Gupta praying for the following:

- a) *The purported email dated October 14, 2022 be set aside, quashed and be adjudged null and void;*
- b) *The applicant's resolution plan be considered and/or the applicant be allowed to increase its bid.*
- c) *The Resolution Professional be directed to furnish the applicant with copies of all the CoC minutes from the inception of the bids given by the applicant and until the purported email dated October 14, 2022 accepting the plan of Jupiter Wagons Limited;*
- d) *Leave be given to the applicant to file a Supplementary Affidavit dealing with the minutes to be furnished by the Resolution Professional within a period of fifteen days from the receipt of such CoC minutes.*
- e) *Resolution Professional be directed to initiate fresh bid for better price discovery;*
- f) *A fit, proper and independent person be appointed to conduct the bidding between both the Resolution Applicant;*
- g) *Both the Resolution Applicants be directed to put financial bid before the Tribunal.*

***11. Submissions of Mr. Jishnu Chowdhury, learned Counsel appearing on behalf of the Applicant.***

11.1. The learned Counsel submitted that there were three Resolution Applicants viz. G. S. Global Projects Private Limited, Lal Baba Seamless Tubes Private Limited ("**LBS**") and Jupiter Wagons Limited ("**JWL**").

11.2. Jupiter Wagons Limited was declared as the successful Resolution Applicant. The Learned Counsel submitted that despite satisfying the

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relevant eligibility criteria and willingness to increase its bid, the Resolution Plan submitted by the Applicant was not accepted.

11.3. It is submitted that during the negotiation process the bidding went unto ten rounds and till the 9<sup>th</sup> round of bidding, the Applicant was the highest bidder and, in the 10<sup>th</sup> round, the bidding process was closed after Jupiter Wagons Limited placed its bid and the Applicant was not given an opportunity to increase its bid.

11.4. The Applicant enquired by an email dated 12 October 2022 about the status of the Resolution Plans, *vide* email dated 13 October 2022 the Resolution Professional informed the Applicant that all the compliant Resolution Plans have been put to vote for the approval by the CoC. The Applicant was informed that the Resolution Plan of Jupiter Wagons Limited was approved by the CoC *vide* email dated 14 October 2022.

11.5. The learned Counsel submitted that the procedure followed by the Resolution Professional is arbitrary and non-transparent for the following reasons:

- a. The Applicant was only provided information on piecemeal basis;
- b. The Resolution Professional informed that the payments to the Employees Provident Fund Organization was to be made in full in compliance with the Order of Hon'ble NCLAT, New Delhi.
- c. The Resolution Professional on the date of negotiation process informed that Rent of Kolkata Port Trust for a period of 13 months is to be paid as part of CIRP Costs over and above the expenses already incurred during the CIRP Period of the Corporate Debtor.
- d. The Applicant ought to have been provided an opportunity to improve its bid and match the highest bid in the interest of maximization of the value of the Corporate Debtor.

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- e. No reasons for the alleged acceptance of the bid of Jupiter Wagons Limited was provided and no reasons for non-acceptance of the plan of the applicant was accorded.
- f. The basis on which the resolution plans were evaluated has not been disclosed and the entire process of the alleged acceptance of the resolution plan of Jupiter Wagons Limited is arbitrary, biased, procedurally irregular and reeks of malafide.
- g. None of the documents including the deliberations of the CoC leading upto the alleged acceptance of the Resolution Plan of Jupiter Wagons Limited was provided to the applicant despite its insistence.
- h. The applicant is still unaware as to whether the final plan submitted by the applicant was brought to the knowledge of the CoC at the time of alleged acceptance of the Resolution Plan of Jupiter Wagons Limited.
- i. No basis for the alleged acceptance of the resolution plan of Jupiter Wagons Limited and non-acceptance of the plan of the applicant has been disclosed.
- j. The principles of natural justice and reasonableness has not been adhered to in evaluation process of the resolution plans.
- k. The Resolution Professional disclosed the allocated Resolution Fund of the Resolution Applicant to all other Resolution Applicants participating in the resolution process of the Corporate Debtor thereby not maintaining confidentiality in an attempt to seek maximize realization.

11.6. It is further submitted that the Applicant had increased its bid. The Resolution Professional submitted an Amended/corrected minutes of meeting dated 14 September 2022, wherefrom it appears that JWL total offer is Rs.24.64Crore and the Applicant's total offer is

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Rs.24.58Crore. Hence, the offer of JWl is Rs.6Lakh more than the offer of the Applicant. It is submitted that although the offer of the Applicant was Rs.24.58Crore but in the table of the minutes of the meetings reflects the offer of the Applicant as Rs.23.02Crore which is done in gross violation of the norms and to influence the CoC to vote in favour of JWl.

11.7.It is further submitted that the Applicant has offered to pay Rs.12,22,39,866/- (Rupees Twelve Crore Twenty Two Lakh Thirty Nine Thousand and Eight Hundred and Sixty Six only) to Shyama Prasad Mookherjee Port, Kolkata against their admitted claim but such offer has not been taken into consideration by the Resolution Professional of the CoC. It is submitted that the offer of the Applicant has to be taken into consideration by the Resolution Professional, thus, the actual offer of the Applicant is more than Rs.36.80Crore.

11.8.The members of the CoC failed to acknowledge and record the payment to be made towards the Board of Shyama Prasad Mookherjee Trust by the Applicant as the CoC was misguided by the Resolution Professional.

11.9.The learned Counsel further submitted that the Evaluation Matrix are absolutely biased and illogical and upon influence of the Resolution Professional. It is submitted that the Resolution Professional had advised that after payment of Upfront Amount, the balance is to be paid within 180 days and accordingly the Applicant had prepared the payment schedule in the Resolution Plan submitted by the Applicant.

11.10. It is further submitted that inspite of offering Rs.1.46Crore more payment to the Corporate Debtor than JWl, 28 points have been given to JWl and 20.25 points have been given to the Applicant without any proper justification.

11.11. The learned Counsel placed reliance on ***Committee of Creditors of Essar Steel India Limited through Authorised Signatory v. Satish Kumar Gupta & Ors.*** (paragraph no. 46)



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12. *Submissions of Mr. Ratnanko Banerji, learned Senior Counsel appearing on behalf of the Resolution Professional*

- 12.1. The learned Senior Counsel submitted that the Applicant is merely an unsuccessful resolution applicant as a result of due exercise of commercial wisdom by the CoC within the applicable timeline. The resolution plan of the Applicant was rejected by 100% vote of the CoC, further the Applicant has also failed to make the CoC a party to the Application.
- 12.2. The CoC have approved the Resolution Plan submitted by Jupiter Wagons Limited in respect of the Corporate Debtor with 100% voting share. An application being I.A.(IB) No. 1335/KB/2022 has been filed for approval of the Resolution Plan of JWL.
- 12.3. The financial allocation by JWL is Rs.24.64 Crore at the end of the ten round negotiation process was more than that of the Applicant is Rs.24.58 Crore.
- 12.4. The CoC had duly evaluated the competing Resolution Plans as per the pertinent evaluation matrix and the score of the Applicant was lower than that of JWL.
- 12.5. JWL had been duly declared by the CoC as "HI" and the Applicant was declared "H2". The CoC had duly deliberated on the competing plans prior to voting and found all of them feasible and viable.
- 12.6. The CoC had duly noted and discussed the Negotiation Process/ Negotiation Process Note that has governed the negotiation with the competing resolution applicants in the instant CIRP.
- 12.7. The learned Senior Counsel placed reliance on the judgment of the Hon'ble Supreme Court in *K. Sashidhar v. Indian Overseas Bank and Ors [2019] 12 SCC 150* ] (paragraphs 52 and 64) and submitted that the CoC, in any case, is not required to adduce specific reasons for rejecting the Resolution Plan submitted by the Applicant and/or approving the Resolution Plan submitted by JWL as binding precedent prescribes an intrinsic assumption of the validity of the assessment of competing Resolution Plans by the CoC. The opinion of the CoC

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apropos such Resolution Plan is expressed through pertinent voting results and is not open to challenge.

12.8. The learned Senior Counsel further relies on the judgment of the Hon'ble NCLAT in *Indian Potash Limited (Unsuccessful Resolution Applicant) Through Its Authorised Signatory v. Naresh Kumar Verma & Ors. CA(AT)(Ins.) No.985 of 2021* ] to buttress his submissions and specifically relied on paragraphs 6-17, whose material facts bear appreciable degree of resemblance to the facts at hand in the instant matter.

12.9. The learned Senior Counsel asserted that it is settled law that commercial wisdom of the CoC expressed after due deliberation is non-justiciable and cannot be interfered with when considering a resolution plan for approval in terms of sections 30 and 31 of the Code.

12.10. Mr. Banerji submitted that the Applicant had adequate and equal opportunity to improve the financial allocation under its own resolution plan and is now seeking an undue preference and/or privilege.

12.11. The learned Senior Counsel submitted that all three competing Resolution Applicants had been requested by the Resolution Professional to submit their final revised Resolution Plans incorporating their final financial allocations at the conclusion of the ten round negotiation process and such final revised Resolution Plans had been certified by him to be compliant with applicable law and simultaneously put up for voting by the CoC in strict accordance with section 30(4) of the Code and regulation 39 of the CIRP Regulations.

12.12. It is submitted by the learned Senior Counsel that the Applicant had been extended adequate and equal opportunity over ten rounds of the negotiation process, as afforded to the other competing resolution applicants, to revise upward the financial allocation under its own Resolution Plan and had availed the same. In fact, the Applicant itself has admitted in paragraph 9 of its own Application that it had "increased its bid to Rs. 24.60 Cr." Therefore, the allegation of the

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Applicant in paragraph 10 of its Application that "even during the ten rounds of negotiation in the form of bidding process no opportunity was given for revision of such resolution plan.", is without any substance and against the record of the instant matter.

12.13. It will be apparent from a perusal of clause 3 of Part 1 of the Negotiation Process Note that the negotiation process was designed to end only when every resolution applicant, including the Applicant, had ceased to express any intention to improve the financial terms/allocations in their respective resolution plans at the end of any particular round of negotiation. Therefore, the negotiation process had ended on 29.08.2022 only when the Applicant itself had declined to express any intention to improve its financial terms i.e. final financial allocation of Rs.24.58 Cr at the conclusion of the tenth round of negotiation.

12.14. The Applicant had participated in the ten round negotiation process enthusiastically and without any demur and protest whatsoever. The Applicant has executed all undertakings and/or declarations regarding the negotiation process and was fully aware of the details and mechanism of the same.

12.15. In any case, the Applicant had never communicated to the Resolution Professional in concrete, written and actionable form any proposal to increase the financial outlay under its Resolution Plan, beyond what it had finally proposed in its revised Resolution Plan, at any time during the actual subsistence of the CIRP period. None of the correspondence addressed to the Resolution Professional by the Applicant and annexed to the Application evidence any such proposal for enhancement made in good faith.

12.16. The Applicant has merely made an oral submission in course of the hearing that it is ready to increase its financial offer under its own plan.

12.17. The learned Senior Counsel placed reliance on *ArcelorMittal India Private Limited v. Satish Kumar Gupta &Ors. [Civil Appeal*

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*Nos. 9402-9405 of 2018]* (paragraph nos. 75-61) and submitted that it is settled law that an unsuccessful resolution applicant does not have a vested right in having its resolution plan approved.

12.18. The learned Senior Counsel stated that *ArcelorMital India Private Limited v. Satish Kumar Gupta &Ors. [Civil Appeal Nos. 9402-9405 of 2018]* is clear that section 60(5) of the Code does not vest this Adjudicating Authority with the jurisdiction to interfere the determination of the CoC approving the Resolution Plan submitted by JWL at the stage where an application is under consideration for approval of the Resolution Plan of JWL.

12.19. Mr. Banerji further submitted that the applicant has failed to adduce any cogent and material evidence of any material irregularity by the Resolution Professional.

12.20. The learned Senior Counsel submitted that the Minutes of Meetings of the CoC are confidential documents that are required by regulation 24(7) of the CIRP Regulations to be disclosed/circulated only to participants, but the Minutes of the 14\* Meeting of the COC held on 14.09.2022 has been handed over to the Counsel of the Applicant the wherein the competing resolution plans had been considered, evaluated, deliberated upon and put up for voting by the CoC.

12.21. It is not the case of the Applicant that the Resolution Plan submitted by JWL per se is contrary to law. No specific violation of any requirement referred to in section 30(2) of the Code has been made out. Furthermore, the limited judicial review available to Adjudicating Authority apropos a Resolution Plan approved with the requisite voting share by a CoC" lies within the four corners of section 30(2) of the Code" and does not extend to any alleged material irregularity in the conduct of the CIRP. Mr. Banerji has placed reliance on *Jaypee Kensington Boulevard Apartments Welfare Association and Ors. v. NBCC (India) Ltd. &Ors. [Civil Appeal No. 3395 of 2020]* (Paragraph 77.1, 77, 77.2 and 77.3) and *India Resurgence ARC*

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*Private Limited v. Mis. Amit Metaliks Limited &Anr.* [Civil Appeal No. 1700 of 2021] (Paragraph 10)

12.22. Mr. Banerji further submitted that it is settled law and has been laid down in paragraph 26 of its judgment in *Pratap Technocrats (P) Ltd. v. Monitoring Committee of Reliance Infratel Limited &Anr [Civil Appeal No.676 of 2021]*, that the jurisdiction conferred upon this Adjudicating Authority in regard to approval of the resolution plan submitted by JWL is "*statutorily-defined, recognised and conferred, and hence (sic) cannot be equated with a jurisdiction in equity, that operates independently of the provisions of the statute (IBC)*", and "*the Adjudicating Authority as a body owing its existence to the statute, must abide by the nature and extent of its jurisdiction as defined in the statute itself.*"

***Analysis and Findings***

13. Heard the learned Counsel appearing on behalf of the Applicant and the learned Senior Counsel appearing on behalf of the Resolution Professional and perused the records.
14. The Applicant has alleged that the Resolution Professional provided information in piecemeal basis. In this regard the Applicant has sent a letter to the Resolution Professional on 05 September 2022 with respect to certain queries with respect to the addition of information with respect to the Provident Fund and Gratuity and Shyama Prasad Mookherjee Trust. Both these additions were made during the negotiation process after orders were passed by the Hon'ble NCLAT and this Adjudicating Authority. With respect to Shyama Prasad Mookherjee Trust, this Adjudicating Authority condoned the delay for filing the claim and instructed the Resolution Professional to admit the claim after collation, hence such addition was not in the hands of the Resolution Professional but was a consequence of an order passed by the Adjudicating Authority.
15. Similarly, the Resolution Professional added the amount of the Provident Fund and gratuity after a judgment passed by the Hon'ble NCLAT in *Sikander Singh Jaiswal v. Vinay Talwar & Ors., CA (AT) (Ins.) No. 483 of*

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2019 passed on 11 March 2022. The Resolution Professional did not add the same in his own whims and fancies but he did so after the judgment of the NCLAT. Thus, the Resolution Professional cannot be held responsible for the above.

16. Let us now consider the allegation that the Applicant had increased its bid but the Resolution Professional did not accept the same. On perusal of the minutes of the 11<sup>th</sup> CoC meeting held on 29 August 2022, it is clear from the note in Agenda 4 which is reiterated hereunder:

*“The negotiation process started with Round I and continued till 10 the round. After the 10th round the Jupiter Wagon has given highest plan amount.*

*After 10th round it came to notice of the RP & CoC that GS Global Projects Put Ltd proposed to make full payment of the admitted claims of KoPT one of the OC separately. At this the RP requested clarification from the RA on the differential payment to one of the OC as compared to other OC. At this RA replied that KoPT is the owner of the land at Taratalla and as we all are aware that lease has expired long back and matter is pending before Hon'ble High Court. In between the CIRP has started. He also informed that KoPT has also filed an application before Hon'ble AA for handing over of the land to them. Hence, the KoPT is critical & essential creditors and to restart the company the RA will essentially be required to settle with them.*

*At this the RP informed that whatever said by the RA is correct, however provisions of IBC do not allow discrimination within a class of creditors. At this the RA said that within the class they are not discriminating. They are settling with KoPT separately and directly to clear the dues of KoPT. At which the Chairman informed that the same shall be viewed with a legal perspective and will be considered & treated as per the legal view and also requested them to provide the clause which they will incorporating in this context.”*

17. Hence, it is clear that the Resolution Professional had informed the Applicant that if the proposed amount is accepted then the Resolution Plan filed by the Applicant would be in contravention of the Code.
18. From the record and the minutes of CoC meetings it is clear that the Resolution Professional has done his duty diligently and the allegations of the Applicant are incorrect.

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19. With respect to the decisions of the CoC, there are a catena of decisions starting with *K. Shashidhar v. India Overseas Bank & Ors., Civil Appeal No. 10673 of 2018* and *Committee of Creditor of Essar Steel India Limited v. Satish Kumar Gupta & Ors., Civil Appeal No. 8766-67/2019* that hold that the commercial decision of the CoC is paramount.
20. Further, where the Applicant participated in the negotiation process and was well aware of the negotiation process and should not claim foul play on the part of the Resolution Professional and the CoC due to rejection of its Resolution Plan.
21. In view of the above circumstances, we do not find any merit in the application of the Applicant and hereby **dismiss I.A. (IB) No. 1387/KB/2022.**
22. Now let us consider the application for approval of Resolution Plan filed by the Resolution Professional.  
**IA (IB) No. 1335/KB/2022**
23. **IA (IB) No. 1335/KB/2022** is an application under section 30(6) of the Code after approval of the resolution plan by the Committee of Creditors (“CoC”).
24. The said I.A. was filed by Mr. Sanjai Kumar Gupta, Resolution Professional of Stone India Limited (“**Corporate Debtor**”) (CIN: L35201WB1931PLC006996), by invoking the provisions of section 30(6) of the Insolvency and Bankruptcy Code, 2016 (“**the Code**”) read with regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (“**CIRP Regulation**”) for approval of a Resolution Plan in respect of Stone India Limited.
25. The Applicant opened the Resolution Plans submitted by Jupiter Wagons Limited, GS Global Projects Private Limited and Lal Baba Seamless Tubes Private Limited in the CoC meeting before the CoC members.
26. The Resolution Professional placed the Valuation Reports stating the fair value and/or liquidation value before the CoC in its 9<sup>th</sup> CoC meeting held on 06 July 2022 and 12 July 2022.

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27. The Evaluation Matrix was finalised and the three Resolution Plans were discussed by the CoC in course of the 11<sup>th</sup> CoC meeting, 12<sup>th</sup> CoC meeting and 13<sup>th</sup> CoC meetings.
28. After negotiations with the prospective Resolution Applicants, the CoC requested the prospective Resolution Applicants to submit their revised Resolution Plan incorporating the last financial offers as submitted during the negotiation process held on 29 August 2022 by 08 September 2022.
29. The Resolution Professional submitted his compliance report to the CoC on 15 September 2022 stating that all the three Resolution Plans were compliant with the statutory requirements of the Code.
30. The feasibility and viability of all the Resolution Plans were discussed in the 14<sup>th</sup> CoC meeting held on 14 September 2022 and were put up for voting.
31. The CoC approved the Resolution Plan of Jupiter Wagons Limited dated 13 September 2022 was approved by 100% voting percentage<sup>1</sup>.
32. The Applicant issued Letter of Intent<sup>2</sup> on 14 October 2022 which was unconditionally accepted by JWL on 17 October 2022.
33. The Successful Resolution Applicant *viz.* Jupiter Wagons Limited submitted the performance bank guarantee<sup>3</sup> on 20 October 2022 for Rs.5,00,00,000/- (Rupees Five Crore only) in favour of Indian Overseas Bank.
34. The successful Resolution Applicant, Jupiter Wagons Limited is a public listed company which was incorporated on 27 July 2006, having CIN: L28100MP1979PLC049375.
35. The amounts claimed and admitted are summarised below:

**a. Financial Creditors**

Name of the Lenders	Amount Claimed	Amount Admitted

<sup>1</sup> Page 419 of IA (IB) No. 1335/KB/2022

<sup>2</sup> Annexure A-18 at Pp. 619-620 of the IA (IB) No. 1335/KB/2022.

<sup>3</sup> Annexure A-19 at Pp. 621-625 of the IA (IB) No. 1335/KB/2022.



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Indian Overseas Bank	Rs.19,75,19,629/-	Rs.19,75,19,629/-
ICICI Bank	Rs.16,60,49,613/-	Rs.16,60,49,613/-
State Bank of India	Rs.15,36,43,514/-	Rs.15,36,43,514/-
<b>Total</b>	<b>Rs.51,81,12,756/-</b>	<b>Rs.51,81,12,756/-</b>

**b. Operational Creditors**

<b>Category of Creditors</b>	<b>Amount Claimed</b>	<b>Amount Admitted</b>
Employees	Rs.8,48,72,973.49	Rs.2,98,42,023.67
Workmen	Rs.9,01,64,052.89	Rs.6,92,65,868.35
Government	Rs.22,05,60,337/-	Rs.20,08,09,498.10
Other than Workmen, Employees and Government Dues	Rs.1,14,36,10,418.17	Rs.21,21,53,693.59

**c. Other creditors**

<b>Name of Creditor</b>	<b>Amount Claimed</b>	<b>Amount Admitted</b>
Aryan Exporters Private Limited	Rs.56,34,174/-	Rs.33,00,000/-

36. The Applicant has filed a Compliance Certificate in prescribed form, *i.e.*, Form 'H' dated 25 October 2022, in compliance with regulation 39(4) of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, which has been annexed to the application as **Annexure "A-17"**<sup>4</sup>.

37. The Applicant submits details of various compliances as envisaged within the Code and the CIRP Regulations which requires a Resolution Plan to adhere to, which is reproduced hereunder:

**I. Submission of Resolution Plan in terms of sub-section (2) of section 30 of the Code (as amended vide Amendment dated 16 August 2019):**

<sup>4</sup> Pp. 612-618 of the IA (IB) No. 1335/KB/2022.

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<i>Clause of s.30(2)</i>	<i>Requirement</i>	<i>How dealt with in the Plan</i>
(a)	Plan must provide for payment of CIRP cost in priority to repayment of other debts of CD in the manner specified by the Board.	<i>Clause 2 of Section XII at Page 47 of the Resolution Plan.</i>
(b)	(i) Plan must provide for repayment of debts of OCs in such manner as may be specified by the Board which shall not be less than the amount payable to them in the event of liquidation u/s 53; or (ii) Plan must provide for repayment of debts of OCs in such manner as may be specified by the Board which shall be not less than amount that would have been paid to such creditors, if the amount to be distributed under the resolution plan had been distributed in accordance with the order of priority in sub-section (1) of section 53, whichever is higher and (iii) provides for payment of debts of financial creditors who do not vote in favour of the resolution plan, in such manner as may be specified by the Board.	<i>Clauses 4(iv) , 6(iv) and 7(iv) of Section XII at Pages 50,53, 55 of the Resolution Plan.</i>  <i>Clause 3(d) of Section XII at Page 47 of the Resolution Plan.</i>
(c)	Management of the affairs of the Corporate Debtor after approval of the Resolution Plan.	<i>Section XV at Pages 73-75 of the Resolution Plan.</i>
(d)	Implementation and Supervision.	<i>Section XIV at Page 72 and Section XV at Pages 73 to 75 of the Resolution Plan.</i>

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<i>Clause of s.30(2)</i>	<i>Requirement</i>	<i>How dealt with in the Plan</i>
(e)	Plan does not contravene any of the provisions of the law for the time being in force.	<i>Section XVII at Pages 89-91 of the Resolution Plan.</i>
(f)	Conforms to such other requirements as may be specified by the Board.	<i>Section XVII at Pages 89-91 of the Resolution Plan.</i>

**II. Measures required for implementation of the Resolution Plan in terms of Regulation 37 of CIRP Regulations:**

<i>Particulars</i>	<i>Relevant Page of the Resolution Plan dealing aforesaid compliance with Regulation</i>
<i>A resolution plan shall provide for the measures, as may be necessary, for insolvency resolution of the corporate debtor for maximisation of value of its assets, including but not limited to the following: -</i>	
(a) transfer of all or part of the assets of the corporate debtor to one or more persons;	<i>Not proposed in the Resolution Plan.</i>
(b) sale of all or part of the assets whether subject to any security interest or not;	<i>Not proposed in the Resolution Plan.</i>
(c) restructuring of the corporate debtor, by way of merger, amalgamation and demerger;	<i>Clause 3 of Section X at Pages 40-41 of the Resolution Plan.</i>
(d) the substantial acquisition of shares of the corporate debtor, or the merger or consolidation of the corporate debtor with one or more persons;	<i>Clauses 1 and 2 of Section X at Page 38-40 of the Resolution Plan.</i>

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<i><b>Particulars</b></i>	<i><b>Relevant Page of the Resolution Plan dealing aforesaid compliance with Regulation</b></i>
(e) cancellation or delisting of any shares of the corporate debtor, if applicable;	<i>Clause 1 of Section X at Pages 38 of the Resolution Plan.</i>
(f) satisfaction or modification of any security interest;	<i>Clause 3(g) of Section XII at Page 47 of the Resolution Plan.</i>
(g) curing or waiving of any breach of the terms of any debt due from the corporate debtor;	<i>Not proposed in the Resolution Plan.</i>
(h) reduction in the amount payable to the creditors;	<i>Page 14 of the Resolution Plan.</i>
(i) extension of a maturity date or a change in interest rate or other terms of a debt due from the corporate debtor;	<i>Not proposed in the Resolution Plan.</i>
(j) amendment of the constitutional documents of the corporate debtor;	<i>Clauses 8 of Section XIII at Page 71 of the Resolution Plan.</i>
(k) issuance of securities of the corporate debtor, for cash, property, securities, or in exchange for claims or interests, or other appropriate purpose;	<i>Not proposed in the Resolution Plan.</i>
(l) change in portfolio of goods or services produced or rendered by the corporate debtor;	<i>Section IX at Page 36 of the Resolution Plan.</i>
(m) change in technology used by the corporate debtor; and	<i>Section IX at Page 36 of the Resolution Plan.</i>
(n) obtaining necessary approvals from the Central and State Governments and other authorities.	<i>Section XI at Pages 43-45 of the Resolution Plan.</i>

**III. Mandatory contents of Resolution Plan in terms of Regulation 38 of CIRP**

**Regulations:**

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<i>Reference to relevant Regulation</i>	<i>Requirement</i>	<i>How dealt with in the Plan</i>
38(1)	The amount due to the operational creditors under a resolution plan shall be given priority in payment over financial creditors.	<i>Clauses 4, 6 and 7 at Pages 50, 53-54 and 55 respectively of the Resolution Plan.</i>
38(1A)	A resolution plan shall include a statement as to how it has dealt with the interests of all stakeholders, including financial creditors and operational creditors of the corporate debtor.	<i>Section III at Pages 12-14 and Section XII at Pages 46-63 of the Resolution Plan.</i>
38(1B)	A resolution plan shall include a statement giving details if the resolution applicant or any of its related parties has failed to implement or contributed to the failure of implementation of any other resolution plan approved by the Adjudicating Authority at any time in the past.	<i>Section XVII at Page 89 of the Resolution Plan.</i>
38(2)	A resolution plan shall provide: (a) the term of the plan and its implementation schedule;	<i>Section XIV at Page 72 of the Resolution Plan.</i>
	(b) the management and control of the business of the corporate debtor during its term; and	<i>Section XV at Pages 73-75 of the Resolution Plan.</i>

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<i>Reference to relevant Regulation</i>	<i>Requirement</i>	<i>How dealt with in the Plan</i>
	(c) adequate means for supervising its implementation.	<i>Section XV at Pages 73-75 of the Resolution Plan.</i>
38(3)	<i>A resolution plan shall demonstrate that –</i>	<i>Section VI Pages 30-31 of the Resolution Plan.</i>
	<i>(a) it addresses the cause of default;</i>	
	<i>(b) it is feasible and viable;</i>	<i>Section IX at Pages 36-37 of the Resolution Plan.</i>
	<i>(c) it has provisions for its effective implementation;</i>	<i>Section XIV at Page 72 of the Resolution Plan.</i>
	<i>(d) it has provisions for approvals required and the timeline for the same; and</i>	<i>Section XI at Pages 43-45 of the Resolution Plan.</i>
	<i>(e) the Resolution Applicant has the capability to implement the resolution plan.</i>	<i>Section V at Pages 18-27 of the Resolution Plan.</i>

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38. The Applicant submits that the successful Resolution Applicant has submitted an affidavit<sup>5</sup> of eligibility under section 29A of the Code.

**Details of Resolution Plan/Payment Schedule**

39. The Applicant submits the relevant information with regard to the the amount claimed, amount proposed to be paid by the Resolution Applicant, *i.e.*, **Jupiter Wagons Limited**, under the said Resolution Plan is tabulated as under:

(In Crore)

<b>Particulars</b>	<b>Claim Considered</b>	<b>Resolution Plan Amount</b>	<b>%age recovery</b>
CIRP Cost*	1.25	1.25	100.00%
Financial Creditors	51.81	15.29	29.51%
Operational Creditors - Employees	2.98	0.74	24.69%
Operational Creditors - Workmen	6.88	1.96	28.47%
Operational Creditors - Statutory Authorities	20.08	1.36	3.31%
Operational Creditors (other than employees, workmen and statutory authorities)	21.03		
Other Creditors (Other than financial creditors and operational creditors)	0.33	0.01	2.50%
<b>Total</b>	<b>104.37</b>	<b>20.61</b>	<b>19.74%</b>

**Resolution Plan Snapshot**

40. The summary of the timeline of financial proposal/payment under the Resolution Plan of **Jupiter Wagons Limited** is tabulated hereunder:

(In Crore)

<sup>5</sup> Pp. 607-610 of the IA (IB) No. 1335/KB/2022.

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<b>Particulars</b>	<b>Upfront Payment Within 90 Days</b>	<b>Within a period of 1 year</b>	<b>Total</b>
CIRP Cost*	1.25	NA	1.25
Financial Creditors	15.29	NA	15.29
Operational Creditors - Employees	0.74	NA	0.74
Operational Creditors - Workmen	1.96	NA	1.96
Operational Creditors - Statutory Authorities	1.36	NA	1.36
Operational Creditors (other than employees, workmen and statutory authorities)		NA	
Other Creditors (Other than financial creditors and operational creditors)	0.01	NA	0.01
Non-Promoter Shareholders (Other than Bank)	Nil	NA	Nil
Promoters' Shareholding	Nil	NA	Nil
Business Improvement (for CAPEX / Renovation /Synchronisation & Working Capital)	-----	25.00	25.00
<b>Total</b>	<b>20.61</b>	<b>25.00</b>	<b>45.61</b>

*\* Estimated CIRP cost as provided by RP. CIRP Cost will be paid at actuals and any amount over and above Rs1.25 crore as estimated above shall be adjusted with the settlement amount to be paid as upfront to the Secured Financial Creditors. In Case CIRP Cost is less than Rs.1.25 crore, the RA will*



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*pay the actual amount.. In addition to the same the Rent for the CIRP Period will be paid to Kolkata Port Trust in actuals.*

Additionally, the RA will also pay the PF dues outstanding till the effective date.

**Details on Management/Implementation and Reliefs as per the Resolution**

**Plan – Salient Features**

41. The Resolution Plan also provides for –
- a) Management of Company after resolution in Section XV at Pages 73 to 75 of the Resolution Plan;
  - b) Term of the resolution plan in Section XIV at Page 72 of the Resolution Plan; and
  - c) Implementation and Supervision of the resolution plan in Section XIV at Page 72 and Section XV at Pages 73 to 75 of the Resolution Plan.

42. **Relinquishment/Waiver of liabilities and Approvals**

Sl. No.	Relief and/or Concessions and Approvals Sought
1.	<p><b>Handover of Assets &amp; Units</b></p> <ol style="list-style-type: none"><li>a. All the assets, property or bank account of the CD shall remain vested on the CD/RA on the NCLT Approval Date. Any Person (including a Creditor or a Government Authority) who is in possession of the assets, property or bank account of the Company shall allow possession of such assets, property or bank account to the Company on and from the Effective Date, irrespective of any symbolic or actual possession or attachment of assets, property or bank account by such Person prior to NCLT Approval Date.</li><li>b. No Person (including a Creditor or a Government Authority) shall take possession of and / or create Encumbrance or attach any assets of the Company after the Effective Date on account of any Claim against the Company which relates to a period prior to the Closing Date</li><li>c. Any Sale / Agreement to Sale / Lease Agreement / Rent Agreement or any other transaction of similar nature with respect to sale / lease / rent of the said land prior to the Effective Date shall stand terminated, shall be considered null and void and any advance / money received in any form by the CD on account of such transaction shall be forfeited and</li></ol>

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<b>Sl. No.</b>	<b>Relief and/or Concessions and Approvals Sought</b>
	<p>the CD / RA shall not be liable to refund any such advance / money received in any form or interest, penalty, charges, etc on such money.</p> <p>d. Where SIL is the lessee in respect of any land leased to it by third party, such such lease shall continue and nothing herein shall have the effect of terminating the same</p> <p>e. The land owners of Taratalla unit:</p> <ul style="list-style-type: none"><li>i. Should not cancel the Leasehold rights of CD for any breach committed by the CD prior to the Effective Date</li><li>ii. Should not cancel the leasehold right of the land on account of any past dues, whether in the nature of unpaid rent, unpaid taxes, unpaid lease charges, etc or interest, penalty, etc thereon. In fact, all such past dues are to be treated as Claim and the landowners shall have no claim whatsoever against the Corporate Debtor pertaining to the period prior to the Effective Date except to the extent provided for payment by the Resolution Applicant in this Resolution Plan, if applicable</li><li>iii. Should allow the restructured CD to continue operations in a peaceful manner at the above-stated land parcels for at least two years from the date of approval of the plan</li><li>iv. Should allow CD to expand capacities, as &amp; when required, on the said land</li></ul> <p>f. The MC shall allow possession of the premises / offices of the Company, all passwords, bank account details, cheque books, statutory registers, minutes books, financial and tac records, all communication with vendors, customers, government and regulatory authorities and all other documents pertaining to the Company and its business, information technology systems (including all software and hardware), access to ERP system, etc to the Resolution Applicant within 90 days of the Effective Date</p>
2.	<p><b>Utilities</b></p> <p>a. The Resolution Applicant proposes to revive the unit and to resume production facilities to achieve the broader objective of the IB Code.</p>

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<b>Sl. No.</b>	<b>Relief and/or Concessions and Approvals Sought</b>
	<p>It is not feasible to operate the plant without the support &amp; co-operation of Utility suppliers.</p> <p><b>b.</b> The Resolution Plan, once approved, will be binding on all stakeholders and all the utility suppliers, should consider approval of this Resolution Plan as direction of Adjudicating Authority to supply respective utilities, including Power.</p> <p><b>c.</b> In respect of past dues / pending liabilities of Utility Suppliers for which Claims have been filed by the authorities and admitted by the Resolution Professional as Operational Creditors, the RA shall make payments as set out in in this Plan.</p> <p><b>d.</b> Except for above, no amounts are proposed to be paid (at any time in future) against any such pending suits / liabilities of the Company, which relates to a period prior to the Effective Date. Accordingly, all such Claims and liabilities shall be deemed to be permanently extinguished and / or settled at NIL value on the NCLT Approval Date, by virtue of NCLT Approval Order.</p> <p><b>e.</b> Further, the relevant authorities shall not bring, institute or file any future claim, litigation or take action against the CD or RA before any Court, Tribunal or Authorities with respect to their pending claims / dues pertaining prior the Effective Date.</p> <p><b>f.</b> Immediately after the Effective Date, the liability of the utility suppliers to be restricted to the settlement amount proposed under this Plan.</p> <p><b>g.</b> Utility Suppliers should not raise any further demand on account of dues prior to the Effective Date</p> <p><b>h.</b> Utility Suppliers should not withhold / disconnect the Power supply on the ground of pending old dues prior to the Effective Date</p> <p><b>i.</b> Utility Suppliers should withdraw all legal cases filed, if any, immediately after the Effective Date</p>
3.	<p>Non Compliance under Applicable Laws</p> <p><b>a.</b> There may be penalty and other charges due to non-compliance of various SEBI and Stock Exchange regulations, ROC, MCA and other regulatory authorities. Such penalties and charges are part of Operational Dues, the liquidation value of which is NIL. RA proposes</p>

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Sl. No.	<b>Relief and/or Concessions and Approvals Sought</b>
	<p>to NIL amount as settlement of such penalties, charges, etc. Accordingly, such penalties, charges, etc shall stand extinguished by virtue of the order of the NCLT approving this plan and the Corporate Debtor shall not be liable to pay any amount against such demands.</p> <p>b. The Resolution Applicant would be entitled to remedy and / or rectify any breach, violation, defects, deficiencies etc. which the Corporate Debtor has committed and would also be entitled to do all such legal compliances which were not done by the CD without paying any penalties / interest / charges / taxes/ etc. All penalties, prosecution, compounding, etc relating prior to Effective Date will be condoned off.</p> <p>c. All Government Authorities to waive the Non-Compliances of the Corporate Debtor prior to the effective date;</p> <p>d. Resolution Applicant and the Corporate Debtor after the successful acquisition by the Resolution Applicant shall not be responsible for any defaults for the period prior to effective date, of any nature under any law as may be applicable from time to time including but not limited to ED/ RBI/ CBI/ CVC/ PMLA/ FEMA / FERA, BSE, SEBI, Customs, Excise, VAT, GST, ST/CST/ Octroi, Property Tax, EPFO, ESI and any other law/ enforcement agencies even if not mentioned here.</p>
4.	<p><b>Income Tax &amp; Indirect Tax</b></p> <p>a. All dues of the respective Tax departments in relation to the period prior to the CIRP Date, whether claimed or not and whether admitted or not, is a “claim” and “debt”, each as defined under the IBC, and would consequently qualify as “operational debt” (as defined under the IBC). Thus, the full amount of such claims shall be deemed to be owed and due as of the CIRP Date. No further assessment / reassessment of such taxes upto the FY 2021-22 should be done by respective Tax Departments. Further, upon approval of the Plan by NCLT, RA would not be liable to pay any income tax pertaining to period upto the CIRP date.</p> <p>b. Accordingly,</p>

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<b>Sl. No.</b>	<b>Relief and/or Concessions and Approvals Sought</b>
	<p>i. All pending dues under the provisions of respective Acts, including taxes, duties, penalties, interest, fines, cesses, etc, whether admitted or not, due or contingent, crystallised or un-crystallised, known or unknown, secured or unsecured, disputed or undisputed, shall stand extinguished by virtue of the order of the NCLT approving this plan and the Corporate Debtor shall not be liable to pay any amount against such demand save and except to the extent of the amount stated in Para 7.6 of Section II of part B (Financial Proposal) of this plan.</p> <p>ii. All assessment/re-assessment/revision/penalty/apellate or other proceedings pending in the case of the Corporate Debtor as on the Effective Date, relating to the period prior to that date, shall stand terminated and all consequential liabilities, if any, shall be waived and shall be considered to be not payable by the corporate debtor by virtue of the NCLT order approving this Plan.</p> <p>iii. All notices issued under the provisions of the respective Acts to initiate any proceedings viz. assessment/re-assessment/revision/penalty/etc. against the Corporate Debtor in relation to the period prior to the Effective Date shall be considered withdrawn and shall not be proceeded against.</p> <p>iv. No notices should be issued under the provisions of the respective Acts to initiate any proceedings viz. assessment/re-assessment/revision/penalty/etc. against the Corporate Debtor in relation to the period prior to the Effective Date.</p> <p>v. Any proceedings which were kept in abeyance in view of insolvency process or otherwise shall not be revived post the order of the NCLT.</p> <p>vi. No further demand for period prior to the Effective Date shall be raised by respective Departments</p> <p>vii. AA to pass necessary orders/ give appropriate directions to direct tax authorities/ Principal Commissioner of Income-tax to not apply/ invoke section 79 of IT Act on implementation of the Resolution Plans and allow benefit of carry forward and set-off of losses of Corporate Debtor existing and arising pursuant to implementation of Resolution Plan post change in majority shareholding</p>

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<b>Sl. No.</b>	<b>Relief and/or Concessions and Approvals Sought</b>
	<p>viii. AA to pass necessary orders/ give appropriate directions to direct tax authorities to grant waiver from getting No Objection Certificate from direct tax authorities as contemplated under section 281 of IT Act. Similar directions to be given to indirect tax authorities as well.</p> <p>ix. All tax litigations, prosecutions, tax legal proceedings, suits, demands, notices, show-cause notices, demand notices, actions, arbitration or administrative, judicial, quasi-judicial, regulatory, government or any enforcement agencies, pending or threatened against the Corporate Debtor or whose outcome adversely affects the Corporate Debtor (including but not limited to the proceedings set out in the Process Memorandum and financial statements of Corporate Debtor) arising prior to or after the Date of approval of plan, shall be deemed to have been withdrawn or dismissed and will be deemed to have been barred with effect from the Date of approval of plan.</p> <p>x. Not prejudice to above, all tax litigations or proceedings either civil or criminal against the Corporate Debtor shall be withdrawn and necessary assistance / support shall be provided as may be required and called for in this regard. Resolution Applicant prays to AA to give appropriate directions regarding termination/revocation of all ongoing litigations and proceedings against the Corporate Debtor</p> <p>xi. AA to pass necessary orders/ give appropriate directions for Waiver of any past liabilities irrespective whether claimed or unclaimed from any authority including but not limited from direct tax authority / indirect tax authority/ land revenue authority/ gram panchayat or any other revenue authority on settlement of dues as per Resolution Plan. Not prejudice to above, AA to give specific directions to Ministry of Corporate Affairs, Government of India, Provident Fund, Sales Tax Authorities, commercial tax authorities, VAT authorities, Service Tax authority, GST authority, Excise Duty Authorities, Fringe Benefit Tax authorities, Wealth tax authorities, etc. to waive demand, interest and penal charges for past dues pertaining to period up to date of approval of plan.</p>

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	<p>xii. AA to pass necessary orders/ give appropriate directions for waiver of any liabilities/ penalty/ prosecution arising from non-compliance in relation to not filing return relating to Direct Tax/ Indirect Tax for period prior to date of approval of resolution plan.</p> <p>c. Allow setting off of losses and unabsorbed depreciation for the purpose of computation of book profit as permitted under section 115JB of Income Tax Act, 1961.</p> <p>d. Exemption from any tax liability arising due to implementation of the Resolution Plan both in computing total income under the normal provisions of the IT Act and in the computation of book profit u/s 115JB of the IT Act.</p> <p>e. Waiver of any income-tax and Minimum Alternate Tax (MAT) liability or consequences (including interest, fine, penalty, etc) on SIL., Resolution Applicant and its shareholders on account of various steps as proposed in the Resolution Plan, including but not limited to liabilities if any under Section 41 (1), Section 56, Section 43, Section 43B, Section 28, Section 194R, Section 115JB and Section 79 of the Income-tax Act, 1961, including, without limitation waiver of MAT and income tax implication arising due to write back/write off of liabilities in the books of accounts of SIL without any impact on brought forward tax and book loss / depreciation, pursuant to this Resolution Plan.</p> <p>f. Instructions to prepare annual financial accounts, obtain tax audit reports and file tax returns for previous years - that the Hon'ble NCLT be pleased to give or issue necessary directions, instructions to the ROC, CBDT, any other statutory authorities as may be necessary to allow the CD to prepare its annual financial accounts, appoint statutory auditors, obtain statutory auditor reports, or any other report which have not been prepared / obtained for any financial year/s (starting from financial year 17-18) till the Resolution Plan is approved by the Adjudicating Authority as required to be compliant with the provisions of the Companies Act, 2013, obtain tax audit reports and file its income tax returns under the Income Tax Act, 1961 and other returns which have not been filed for any previous financial year/s (starting from financial year 17-18) till the Resolution Plan is approved by the</p>

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	<p>Adjudicating Authority, without being subject to any tax or interest or penalty or penal liability, if any, under any Applicable Law, including in respect of tax deducted/ collected at source returns, election of tax regime as may be applicable notwithstanding that the statutory period for such filing may have expired and such returns, once filed, shall be considered as having been filed within the permitted due date and such filings shall be deemed to be final and accepted by the tax authorities and shall not be liable for any assessment or re-assessment by any other tax authorities;</p> <p>g. Permission to carry forward unabsorbed business losses and unabsorbed depreciation - that the Hon'ble NCLT be pleased to give or issue necessary directions, instructions to the Central Board of Direct Taxation ("CBDT"), to grant the reliefs/exemptions/waivers from applicability of Sections 41, 79, 28, 56, 170, 194R and 281 of the Income Tax Act, 1961, for the purposes of implementation of this Resolution Plan;</p> <p>It is further clarified that a company is not ordinarily permitted to carry forward its accumulated business losses in case of a change in the shareholding of such company in excess of 51% (fifty-one percent) as per Section 79 of the Income-tax Act, 1961. However, this restriction does not apply if such change in shareholding takes place pursuant to a resolution plan approved under the Code, provided that the jurisdictional Principal Commissioner of Income-tax or the jurisdictional Commissioner of Income-tax (as appropriate), is afforded reasonable opportunity to express his views in this regard.</p> <p>Accordingly, the Hon'ble NCLT be pleased to or cause the Resolution Professional or the reconstituted board of Corporate Debtor, or cause the Corporate Debtor to, serve a notice to jurisdictional Principal Commissioner of Income-tax or the jurisdictional Commissioner of Income-tax (as appropriate) immediately after this Resolution Plan is submitted to the Adjudicating Authority for its approval, and it is prayed that the Corporate Debtor should be permitted to carry forward its unabsorbed business losses notwithstanding a change in the shareholding of the Company pursuant to this Resolution Plan.</p>



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5.	<p><b>Human Capital</b></p> <p>a. The Corporate Debtor &amp; Resolution Applicant be allowed to re-build the Human Capital as per the requirement without any obligations.</p> <p>b. The Resolution Applicant is free to reorganise the business operations of the Corporate Debtor and to adopt suitable measure, including re-aligning the manpower requirement and changing the use of its land in such manner as is likely to benefit in the turnaround process of SIL.</p> <p>c. Further, the Resolution Applicant would be allowed to start and operate any business or enterprise freely without any pending Legal &amp; Statutory hassles related to the period prior to the Effective Date.</p> <p>d. For financial sustainability and also keeping in view the fact that the unit requires major revamping, the Resolution Applicant shall be free to appoint its own resources including manpower, labour, workforce and shall not, subject to the applicable laws, be bound by any Government authority to appoint any of the old employee / workmen or follow requirement of employing from particular state or region. Subject to applicable laws, Resolution Applicant will follow its own well-designed model of employment which will include contractual / fix term/ probation/ regular or deputation or on consultant basis.</p>
6.	<p><b>Existing &amp; Future Claims of SIL</b></p> <p>a. On and from the Effective Date, all Claims (including that of SFCs, Operational Creditors, Lease Rent, water, pollution control, income tax, VAT/Sales Tax/Excise/GST and other statutory dues whether computed/ assessed or not) and /or entitlements, whether crystalized or contingent, pertaining to the Corporate Debtor upto the effective date shall stand extinguished, settled, abated and satisfied in perpetuity, and such extinguishment of Claims and entitlements shall, together with the Plan be considered to be included in the NCLT order.</p> <p>b. All legal proceedings (including any notice, show cause, adjudication proceedings, assessment proceedings, regulatory orders, arbitration proceedings, etc.) initiated before any Court, Tribunal or other forum by or on behalf of any Person including any Creditor to enforce any rights or claims against the CD shall immediately, irrevocably and unconditionally stand withdrawn, abated, settled and/ or extinguished,</p>

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	<p>c. The Creditors of the CD shall have no further rights or claims against the CD (including but not limited to, in relation to any past breaches by the CD), in respect of the period prior to the Effective Date, and all such claims shall immediately, irrevocably and unconditionally stand extinguished.</p> <p>d. All indebtedness of the Corporate Debtor, except IRP Cost, which is not due as of the Insolvency Commencement date but relates to the period prior to the effective date shall stand irrevocable and unconditionally extinguished in perpetuity on and with effect from the effective Date.</p> <p>e. This Resolution Plan provides for the following, in respect of the Financial Creditors and Operational Creditors for any period until the Effective Date:</p> <ul style="list-style-type: none"><li>i. No interests, penal interests, damages or any other amount will be payable on security deposits, if any given by any of the vendors / service providers to the Corporate Debtor.</li><li>ii. No interest, penal interest, damages or any other amount will be payable for any breach of or default under the contracts by the corporate debtor.</li><li>iii. No fine, interests, penalty or any other amount shall be payable for any breach by or acts of omission or commission of the Corporate Debtor, under Applicable Law;</li><li>iv. No amount shall be payable for any Liability of the Corporate Debtor towards transfer charges, stamp duty or registration fee arising in relation to corporate reorganization or transfers of immovable property from predecessors-in-title to the Corporate Debtor and such Liability shall stand fully discharged; and</li><li>v. No amount shall be payable for any Liability of the Corporate Debtor towards tax, fee, interests or penalty for which the assessments in respect of applicable tax laws have not been completed.</li></ul> <p>f. Any proceeds accruing to the Company in terms of any order of the Adjudicating Authority on the applications for avoidance of transactions under Sections 43, 45, 50 and 66 (as applicable) of the Insolvency and Bankruptcy Code, 2016 filed / to be filed by the</p>

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	<p>Resolution Professional before the Adjudicating Authority shall be utilized for distribution among the members of the CoC (excluding any member against whom such order has been passed) in a manner that the CoC may deem fit or as decided by the Adjudicating Authority and you or the Company shall have no control or right (in any manner whatsoever) to determine the utilization or distribution of such proceeds.</p>
7.	<p><b>Effect of the Resolution Plan</b></p> <p>a. The Resolution Plan of the Resolution Applicant shall be required to be approved by the NCLT under Section 31 of the IBC.</p> <p>b. The consent of the Resolution Applicant, as shareholder, is hereby accorded for all the purpose of this Plan. In terms of the circular (ref IBC/01/2017) dated 25<sup>th</sup> October 2017 issued by the MCA, approval of the Shareholders of the Corporate Debtor to the transaction contemplated under the Plan shall deemed to have been given on approval of the Plan by the NCLT. It is clarified that the approval of the NCLT and the Committee of Creditors shall constitute adequate approval for all purposes of the Plan and accordingly, no approval or consent shall be necessary from any other Person in relation to any of these actions under any agreement, the constitution documents of the Corporate Debtor or under any Applicable Laws.</p> <p>c. The restructuring of Capital of CD may require increase in the Authorised Capital of CD and consequently amendment of constitutional documents i.e. Memorandum &amp; Articles of Association of the CD. As per regulation 37 of CIRP regulation the resolution plan may provide for amendment of constitutional documents of CD. Accordingly, as an integral part of the resolution plan, the authorised share capital of the CD shall be increased (if required) to allow such restructuring, without any further act, instrument or deed by CD and without any liability for payment of any fees or duty towards increment of such Authorized Capital.</p>

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	<p>d. In case of capital reduction of Corporate Debtor, the requirement of adding “and reduced” in the name of Corporate Debtor be dispensed with (on account of reduction of share capital of the Corporate Debtor)</p> <p>e. The approval of this Plan by the AA shall be deemed to have waived all procedural requirements in terms of section 66, 42 and 62 of Companies Act, 2013 and rules thereunder for reduction of share capital and issuance of equity shares to Resolution applicant and/or Financial Creditors</p> <p>f. The transaction, contemplated under this Plan, shall be deemed to be authorized and approved by the Corporate Debtor on the effective Date and all powers of attorney issued by the Corporate Debtor or the Board to any person, enabling such Person to execute certain documents and / or represent the Corporate Debtor, shall stand revoked.</p> <p>g. Single Window Clearance: Since the Adjudicating Authorities is same for: (i) Approval of this Plan; (ii) Authorised Capital increase if any (iii) issuance of fresh equity share (iv) Capital Reduction as contemplated in this Plan &amp; (iv) Delisting, the Resolution Applicant requires obtaining all such approvals under a “Single Window Clearance” approach from the NCLT for effective and efficient implementation of the Plan. Accordingly, the Resolution Applicant, hereby requests the Resolution Professional and the Committee of Creditors to submit a schedule of Cancellation of Equity Shares, as may be provided by the Resolution Applicant (containing the terms and conditions for the purpose of implementation of this Section-III (Implementation Provisions)), along with the application to be submitted by the Resolution Professional under section 30 of the Code to the NCLT. To this end, the Resolution Applicant is also willing to comply with other procedural requirement required by the NCLT.</p> <p>Provided that, if the Resolution Applicant is unable to receive Single Window Clearance for any reason whatsoever, the Resolution Applicant shall, notwithstanding such inability to get the Single</p>

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	Window Clearance, be entitled to implement this Plan in accordance with its terms without the Single Window Clearance.
8.	<p><b>Business Operations</b></p> <p>a. This Plan has been prepared on the assumption that there is no liability towards the Risk Purchase against past Purchase Orders / Sale Orders / Agreements / Contracts (Prior to the Effective Date) by any Customers / Suppliers / Vendors / Contractors / Consultants / Clients against the Corporate Debtor. Resolution Applicant shall in no case will be responsible for the past claims.</p> <p>b. All existing and future claims by SIL and all its existing and future rights, entitlement, etc. with Governmental Authorities or any other Person (including third parties) shall not be affected and shall remain enforceable after the Effective Date. Nothing in this Resolution Plan shall be deemed to affect the rights of SIL and/ or the new management of SIL to recover from and/or asset claims or rights against any Person and there shall be no set off of any such amounts recoverable by SIL or any liability of third party towards SIL extinguished pursuant to this Resolution Plan.</p> <p>c. The Memorandum of Association of the CD shall stand revised. The amendment to the Memorandum of Association, including the revisions to the capital clause therein, shall be pursuant to the order of the NCLT and shall not require any additional approval from the shareholders or otherwise. The Resolution Applicant may cause amendments to the Articles of Association of the CD, upon the authorised persons who will be part of managing and operating the affairs of the CD are identified.</p> <p>d. Upon approval of the Plan by the NCLT, the Resolution Applicant be permitted to recast the balance sheet for last 3 financial years, if</p>

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	<p>required, and to draw up the financial statements of the CD for a period ending on the Effective Date (or any date closest to that date as may be practicable) in compliance with applicable accounting standards such that it truly reflects the claims verified and the realisable, fair value of the assets as may be determined by the board of directors of the Resolution Applicant. For the above purpose, the Resolution Applicant will be permitted to carry out necessary write off of assets, creation of additional liability or expenses or write back of liability or provision (as the case may be) in the books of accounts of the CD pertaining to the period between the cut-off date and the Effective Date. Pursuant to the order of the NCLT approving this Plan, any debit or credit, being the balancing figure, shall be adjusted in the capital reserve at the sole discretion of RA and the same shall be deemed to be in compliance with the applicable accounting standards.</p> <p>The restated balance sheet of the CD as would appear on Effective Date, considering the restructuring and payments proposed in the present Resolution Plan form an integral part of this Resolution Plan.</p> <p>e. On and with effect from the Effective Date, all the outstanding negotiable instruments issued by the Corporate Debtor or by any Person on behalf of the Corporate Debtor including demand promissory notes, post-dated cheques and letters of credit, shall stand terminated and the Corporate Debtor's liability under such instruments shall stand extinguished.</p> <p>f. Notwithstanding anything to the contrary, the powers of attorney or authorisations issued by the corporate debtor shall stand cancelled without any further act, instrument or deed</p> <p>g. Upon approval of the plan by NCLT the Resolution Applicant will have the all rights to recover from the Debtors of the CD any amount lying as due in the books of account as on the CIRP date.</p>

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9.	AA to pass necessary orders/ give appropriate directions for specific waiver of transaction costs related leading to implementation of the Resolution Plan including but not limited to any incidence of Stamp Duty, ROC fee, Income-tax, any statutory levy, renewal charges, etc. The resolution plan envisages increase in authorized share capital for implementation, the ROC fees towards the same shall be specifically waived.
10.	AA to pass necessary orders/ give appropriate directions to utility supplier (i) to settle all its dues upto the Effective Date at the price offered by Resolution Applicant under this Plan, (ii) to restore / commit supply of Power at the factory site immediately after the Effective Date and (iii) to commit uninterrupted supply of Power to CD after at the same rate at which it is supplying power to adjoining unit upon approval of this Plan.
11.	AA to pass necessary orders/ give appropriate directions so that : <ul style="list-style-type: none"><li>- the Land of Taratalla unit can be used for a period of at least two years form the date of approval of this plan or till disposal of the matter by the Hon'ble Court whichever is later by payment of lease rent in terms of the Hon'ble High Court order dated 19<sup>th</sup> July 2013; payment of lease rent will be made with effect from the date of approval of this resolution plan.</li><li>- Kolkata Port Trust not to initiate any eviction process and should allow to use the land of Taratalla Unit for a period of two years from the date of NCLT order or till the matter is disposed off by any order of the court whichever is later on the ground of pending old dues prior to the Effective Date. However the RA is agreeable to pay the lease rent in terms of order of Hon'ble Calcutta High Court dated 19<sup>th</sup> July 2013.</li><li>- the entire Land along with other fixed assets of the CD at various locations should be continue to remain -vested to CD immediately after the Effective Date and the land owners of the above assets:</li></ul>

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	<p style="text-align: center;">a) Should not charge any amount in the form of transfer charge, penalty, premium or in any other form accruing, if any, due to change in management;</p> <p style="text-align: center;">b) Should not terminate or cancel the lease arrangement for any reason whatsoever;</p> <p style="text-align: center;">c) Should not re-vest the land from CD to their own names.</p> <p style="text-align: center;">The RA / CD, if required, shall make necessary applications with respective land owners for registering change in control of the Corporate Debtor from the erstwhile shareholders / management / promoter. No transfer charge / transfer premium will be charged by Lessors on account of such change in control.</p>
12.	AA to pass suitable order / give necessary direction so that all the Land Lessors (including Kolkata Port Trust) to allow the Restructured CD to allow operations on the leasehold lands without any hassles or any charges / penalties / etc in any form for the past deeds done prior to the Effective Date. The RA should also be allowed two years time to negotiate with Kolkata Port Trust for renewal of lease agreement.
13.	All relevant Government Authorities to grant relief from payment of stamp duty, registration fees and applicable fees (including fees payable to the jurisdictional Registrar of Companies) for the successful implementation of the Plan (including for the Merger, capital reduction, issuance and transfer of shares or debentures and assignment of Debt).
14.	To pass an order directing all Statutory Authorities including GST / Sales Tax / VAT / CST / Excise / Income Tax department (i) to settle all its dues (whether claimed or not, whether contingent or crystalized, whether disputed or not)) upto the Effective Date at the price offered by Resolution Applicant under this Plan and (ii) All assessment/re-assessment/revision/penalty/appellate or other proceedings pending in the case of the Corporate Debtor as on the Effective Date, relating to the period prior to the Effective Date should be withdrawn and no further



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	assessment / reassessment of such taxes upto the FY 2021-22 should be done by the respective Departments. However, this is not a condition to implement the plan.
15.	CD & RA shall be granted an exemption from all taxes, duties, levies, fees, transfer charges, transfer premiums, and surcharges that arise from or relate to implementation of the Resolution Plan, since payment of these amounts may make the Resolution Plan unviable.
16.	<p>To pass an Order allowing Corporate Debtor to use the brought forward losses and unabsorbed depreciation, whether assessed or not, for the purpose of the Income Tax Act, 1961. Further, RA should not be liable to pay any tax whatsoever arising out of implementation of this Resolution Plan.</p> <p>Allow the benefit of carry forward of losses and unabsorbed depreciation of the CD of the respective financial years notwithstanding that the income-tax return of the CD has not been filed for any year after financial year 2016-17. For this purpose, the RA would be allowed to prepare and file tax returns of financial year 2017-18 onwards in electronic or physical form (as the case may be) inspite of the statutory due date for filing of such tax returns has expired.</p>
17.	The approval of the Resolution Plan by the Adjudicating Authority shall be deemed to constitute compliance with all the procedural requirements in terms of Section 66 of the Companies Act and NCLT (Procedure for Reduction of Share Capital), Rules 2016 and no separate compliance shall be required under the Act or the regulations of SEBI or under any other Applicable Law including filing of application for reduction is required. The capital reduction shall not require the consent of any of the creditors of the Corporate Debtor or approval of the shareholders of the Corporate Debtor as the Plan upon being approved by the NCLT shall be binding on

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	the Corporate Debtor and its stakeholders (including its creditors and shareholders).
18.	AA to pass suitable order so that All Government Authorities to provide reasonable time period of at least 12 months after the effective Date in order to enable Resolution Applicant to assess the status of these Business Permits / Statutory Approvals and ensure that the Corporate Debtor is compliant with the terms of such Business Permits / Statutory Approvals and Applicable Law should not initiate any investigations, actions or proceedings in relation to such Non-Compliances, should co-operate with the CD to renew / obtain for such permits / approvals, permit the Resolution Applicant to continue to operate the business of the Corporate Debtor pending such permits / approvals at least till a period of 12 months from the Effective Date & not to charge any charges, penalty, interest, etc till the time such Permits / Approvals are received.
19.	Neither the Resolution Applicant nor SIL, nor their respective directors, officers and employees appointed as on or after the Effective Date shall be liable for any violations, liabilities, penalties, interests on statutory payments and/ or fines with respect to or pursuant to any order of any Governmental Authority or on account of non-compliance of Applicable Laws by SIL or due to SIL not having in place requisite approvals and licenses to undertake its business as per Applicable Law.
20.	The Resolution Applicant will acquire control over the Corporate Debtor pursuant to the order of the Adjudicating Authority by the Completion Date and not pursuant to the usual acquisition process which would ordinarily include a detailed due diligence and representation, warranties and indemnities in relation to the affairs of the Corporate Debtor from its Existing Promoters. Therefore, the Resolution Applicant may take some time to discover any non-compliances that may exist in relation to the Corporate Debtor on the date of acquisition of control by the Resolution Applicant over the Corporate Debtor. As such the Resolution Applicant may take some time to identify such non-compliances and to address them.

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21.	<p>In light of this, the Resolution Applicant and the Corporate Debtor shall have immunity from any actions and penalties (of any nature) under any laws for any non-compliance of laws in relation to the Corporate Debtor or by the Corporate Debtor, as well as with the terms of any agreement or arrangement entered into by the Corporate Debtor, which was existing as on the Completion Date and which continues for a period of up to 12 months after the acquisition of control by the Resolution Applicant over the Corporate Debtor. Without any liability for the non-compliance during the time specified above, the Resolution Applicant undertakes to cause the Corporate Debtor to expeditiously identify such non-compliances, evaluate the steps required to address such non-compliances and take steps to remedy such non-compliances to the extent practically possible. The Resolution Applicant and the Corporate Debtor shall be entitled to apply to and approach the Adjudicating Authority for relief for continued implementation of the approved Resolution Plan before or after any coercive action is taken against the Corporate Debtor or the Resolution Applicant, especially in view of the limited due diligence offered to the Resolution Applicant.</p>
22.	<p>This Resolution Plan will be implemented pursuant to an order of the Adjudicating Authority, and all actions stated in this Resolution Plan shall be deemed to be approved by the Adjudicating Authority. Accordingly, any action or implementation of this Resolution Plan shall not be a ground for termination of any contracts entered into by the Corporate Debtor.</p>
23.	<p>Resolution Applicant and the Corporate Debtor after the successful acquisition by the Resolution Applicant shall not be responsible for any defaults for the period prior to effective date any nature under any law as may be applicable from time to time including but not limited to ED/ RBI/ CBI/ CVC/ PMLA/ FEMA / FERA, customs, excise, VAT, GST, ST/CST/ Octroi, Property Tax, Income-tax and any other law/enforcement agencies even if not mentioned here.</p>
24.	<p>Upon approval of this Resolution Plan by the Adjudicating Authority, all inquiries, investigations and proceedings, whether civil or criminal, notices, causes of action, suits, claims, disputes, litigation, arbitration or</p>

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	<p>other judicial, regulatory or administrative proceedings against, or in relation to, or in connection with the Corporate Debtor or the affairs of the Corporate Debtor, pending or threatened, present or future, (including without limitation, any investigation, action, proceeding, prosecution, whether civil or criminal, by the Central Bureau of Investigation, the Enforcement Directorate or any other regulatory or enforcement agency), in relation to any period prior to the Completion Date or arising on account of the acquisition of control by the Resolution Applicant over the Corporate Debtor pursuant to this Resolution Plan shall stand withdrawn or dismissed and all liabilities or obligations in relation thereto, whether or not set out in the balance sheets of the Corporate Debtor or the profit and loss account statements of the Corporate Debtor, will be deemed to have been written off in full and permanently extinguished and the Corporate Debtor or the Resolution Applicant shall at no point of time be, directly or indirectly, held responsible or liable in relation thereto notwithstanding any adverse order that may be passed in respect of the same by any authority prior to or after the Completion Date. Upon approval of this Resolution Plan by the Adjudicating Authority, all new inquiries, investigations, whether civil or criminal, notices, suits, claims, disputes, litigation, arbitration or other judicial, regulatory or administrative proceedings will be deemed to be barred and will not be initiated or admitted against the Corporate Debtor in relation to any period prior to the acquisition of control by the Resolution Applicant over the Corporate Debtor or on account of the acquisition of control by the Resolution Applicant over the Corporate Debtor pursuant to this Resolution Plan.</p> <p>However, nothing mention herein above shall be applicable to investigation, action, proceeding, prosecution, suits, etc, whether civil or criminal, regulatory or administrative actions against the erstwhile promoters/directors/employees of the CD</p>
25.	<p>The resolution applicant shall, pursuant to the resolution plan approved under sub-section 31 (1), obtain the necessary approval required under any law for the time being in force within a period of one year from the date</p>

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	of approval of the resolution plan by the Adjudicating Authority under sub-section (1) or within such period as provided for in such law, whichever is later.
26.	<p><b>Subsidiary Companies of CD:</b></p> <p>As per the information available in the ABS as on 31/03/2017 RA understands that the CD has two subsidiary companies as under:</p> <p>(a) Stone Intermodal Private Limited (CIN U51909WB2008PTC129960)</p> <p>(b) Stone Biotech Limited. (CIN U90000WB2011PTC162800)</p> <p>Liabilities relating to those companies has not been made available in the VDR by the RP. As per available data in the MCA site no charges has been filed by any financial creditor and the status has been appearing as as ‘strike off’</p> <p>a. RA is not aware of liabilities and other status of the Subsidiaries &amp; Step-down Subsidiaries, if any.</p> <p>b. Such Subsidiary, Step-down Subsidiary &amp; Associate (whether Indian or Foreign) shall no longer remain part of the restructured CD and therefore, shall not form part of the group. Such Subsidiaries / Associate shall be treated as separate legal entity having no relationship whatsoever with CD / RA. The RA shall take requisite all the approvals for procedural requirements in terms of relevant Section of the Companies Act, 2013 &amp; Rules and RA will comply with all the procedural requirements, if any. Investments of CD in such Companies, if any, shall be treated purely as Investment and such Companies shall not be considered as Subsidiaries or Associate of CD.</p> <p>c. Further, the Resolution Applicant &amp; the Corporate Debtor shall not be liable towards any claims or obligation (present or future, due or contingent, asserted or unasserted, crystallized or uncrystallised, known or unknown, disputed or undisputed,</p>

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	<p>disclosed or un-disclosed) towards or relating to the subsidiaries or associate companies of the Corporate Debtor in India or anywhere outside India that relates to period prior to the Closing Date, including in relation to any Guarantees or Undertaking issued by CD for such subsidiaries or associate in any manner whatsoever.</p> <p>All present or future claims or dues against such Subsidiaries or Associate Companies under Applicable Law (including Taxes), or in relation to any breach, contravention or non-compliance of any Applicable Law (including criminal laws), shall not be the responsibility of the CD or RA and the CD or RA shall no way be held accountable for such dues / breach.</p>
27.	<p>There may be non-compliance of various SEBI and Stock Exchange regulations, ROC, MCA and other regulatory authorities. The Resolution Applicant would be entitled to remedy and / or rectify any breach, violation, defects, deficiencies etc. which the Corporate Debtor has committed and would also be entitled to do all such legal compliances which were not done by the CD. All the Government / Regulatory Authorities to waive the Non-Compliances of the Corporate Debtor prior to the effective date.</p>
28.	<p><b>Status Quo of existing approvals / Default Renewal / Validation of all expired approvals by Railways/RDSO:</b></p> <p>Approval of the Resolution Plan by NCLT will be treated as Specific Order to approve extension of current approvals of Products / Standards stated for maintenance of the Plant &amp; Machinery / Factory etc for another 2 years (approvals which Corporate Debtor already received to supply) given the fact that the viability of the CD Business depends on such approvals.</p>
29.	<p>Upon approval of this Plan by AA, all the subsidiaries &amp; step-down subsidiaries (whether Indian or Foreign) and the present associate Companies of the Corporate Debtor shall be strike out and shall no longer remain subsidiary or associate of such companies. The approval of Resolution Plan by AA shall be deemed to have all the approval for procedural requirements in terms of relevant Section of the Companies</p>

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	Act, 2013 & Rules and RA will comply with all the procedural requirements, if any. Investments of CD in such Companies, if any, shall be treated purely as Investment and such Companies shall not be considered as Subsidiaries or Associate of CD.
30.	Post-acquisition of CD, the new management shall require 12 months for appointment of Auditors, Company Secretary and waiving other Statutory Compliances including but not limited to compliances of SEBI, BSE, etc. The RA should therefore be allowed 12 months' time from the effective date to comply with all statutory approval and requirements including but not limited to filing of Balance Sheet, rectifying SEBI compliances, BSE compliances, etc without any charges, penalties, interest, etc.
31.	As the Resolution Applicant will acquire control over the Corporate Debtor pursuant to the order of the Adjudicating Authority and not pursuant to the usual acquisition process which would ordinarily include a detailed due diligence and representation, warranties and indemnities in relation to the affairs of the Corporate Debtor from its Existing Promoters, the Resolution Applicant may take some time to discover all the non-compliances that may exist in relation to the Corporate Debtor on the date of acquisition of control by the Resolution Applicant over the Corporate Debtor.
32.	The jurisdictional Registrar of Companies to take on record and implement the Plan, upon approval of the Plan by NCLT, without any further compliances.
33.	All Designated Authorised Dealer Category I Banks to grant any approval or dispensation as may be required for actions contemplated under the Plan in accordance with its terms and conditions.
34.	It is clarified that the existing promoters, shareholders, managers, directors, officers or such other person in charge of the affairs and management of the CD (including any person who was an 'officer in default' or 'occupier') prior to the Effective Date shall continue to be responsible and liable for all the liabilities, claims, demand, obligations, penalties etc. arising out of any (i) proceedings, inquiries, investigations,

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	orders, show causes, notices, suits, litigation etc. (including those arising out of any orders passed by the NCLT pursuant to Sections 43, 45, 49, 50, 66, 68, 70, 71, 72, 73, 74 of the IBC (including without limitation, any investigation by Central Bureau of Investigation or the Serious Fraud Investigation Office) or any acts or omissions in breach of applicable law (including but not limited to environmental laws, foreign exchange laws and regulations, labour and employment laws, and laws relating to anti-corruption and prevention of money laundering or diversion of funds) which occurred prior to the Effective Date, whether civil or criminal, pending before any authority, court, tribunal or any other forum prior to the effective Date or (ii) that may arise out of any proceedings, inquiries investigations, orders, show cause, notices, suits, litigation etc. (including any orders passed by the NCLT pursuant to Sections 43, 45, 49, 50, 66, 68, 70, 71, 72, 73, 74 of the IBC ), whether civil or criminal, that may be initiated or instituted post the approval of the Resolution Plan by the NCLT on account of any transactions entered into, or decisions or actions taken by, such existing promoters, shareholders, managers, directors, officers, employees, workmen or other personnel of the CD, and the Resolution Applicant shall at no point of time be, directly or indirectly, held responsible or liable in relation thereto.
35.	All domain names, servers, being currently used by the CD to the extent not owned shall continue to be available for use by the CD for a period of 3 months for the Effective Date.
36.	Resolution Applicant shall not be liable and will be kept indemnified financially or otherwise against any of the negative impact / observation / findings of Forensic Audit and/or transaction audit. Further neither the Corporate Debtor nor any member of the New Promoters or New Promoters group shall be made party to any of the legal cases arising out of such forensic audit.
37.	If Corporate Debtor applies for credit rating / grading with any agency/bank/financial institutions etc., past performance (during the closure period for around 3 years) should not be considered for fiscal fillip. The New Promoters or New Promoters Group and its controlled



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	<p>company/concerns who are proposed to be the shareholders of corporate debtor has got certain synergy with corporate debtors as has been mentioned in Resolution Plan. Therefore, it is possible that some of the products of Resolution applicant or its associate concern may be common with the products of the corporate debtor. Therefore, to attain the financial stability of the corporate debtor, exemption will be available to the Resolution Applicant and its members/associates as well as Corporate Debtor with regard to provisions of the conflict of Interest due to common shareholding of the corporate debtor and Resolution Applicant including its associates from all the customers- – including but not limited to Government/ Semi- Government / PSUs/ Non-Government/ Research &amp; Development Centres / Subsidiaries / Division/ Zones/ Workshop/ Sheds or any other entities not mentioned here.</p>
38.	<p>There might be certain litigations/proceeding against the CD regarding the CD may have conducted its business in beach of certain applicable laws; and (b) an adverse outcome of such proceedings would interrupt the business of the CD as a going concern. Accordingly, all such proceedings should be extinguished / dropped immediately on approval of the Plan by the Adjudicating Authority.</p>
39.	<p>Instructions to prepare annual financial accounts, obtain tax audit reports and file tax returns for previous years - that the Hon'ble NCLT be pleased to give or issue necessary directions, instructions to the ROC, CBDT, any other statutory authorities as may be necessary to allow the CD to prepare its annual financial accounts, appoint statutory auditors, obtain statutory auditor reports, or any other report which have not been prepared / obtained for any financial year/s (starting from financial year 17-18) till the Resolution Plan is approved by the Adjudicating Authority as required to be complaint with the provisions of the Companies Act, 2013, obtain tax audit reports and file its income tax returns under the Income Tax Act, 1961 and other returns which have not been filed for any previous financial year/s (starting from financial year 17-18) till the Resolution Plan is approved by the Adjudicating Authority, without being subject to any tax or interest or penalty or penal liability, if any, under any Applicable Law, including in respect of tax deducted/ collected at source</p>

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	<p>returns, election of tax regime as may be applicable notwithstanding that the statutory period for such filing may have expired and such returns, once filed, shall be considered as having been filed within the permitted due date and such filings shall be deemed to be final and accepted by the tax authorities and shall not be liable for any assessment or re-assessment by any other tax authorities.</p>
40.	<p>Permission to carry forward unabsorbed business losses and unabsorbed depreciation - that the Hon'ble NCLT be pleased to give or issue necessary directions, instructions to the Central Board of Direct Taxation ("CBDT"), to grant the reliefs/exemptions/waivers from applicability of Sections 41, 79, 28, 56, 170 and 281 of the Income Tax Act, 1961, for the purposes of implementation of this Resolution Plan;</p> <p>It is further clarified that a company is not ordinarily permitted to carry forward its accumulated business losses in case of a change in the shareholding of such company in excess of 51% (fifty-one percent) as per Section 79 of the Income-tax Act, 1961. However, this restriction does not apply if such change in shareholding takes place pursuant to a resolution plan approved under the Code, provided that the jurisdictional Principal Commissioner of Income-tax or the jurisdictional Commissioner of Income-tax (as appropriate), is afforded reasonable opportunity to express his views in this regard.</p> <p>Accordingly, the Hon'ble NCLT be pleased to or cause the Resolution Professional or the reconstituted board of Corporate Debtor, or cause the Corporate Debtor to, serve a notice to jurisdictional Principal Commissioner of Income-tax or the jurisdictional Commissioner of Income-tax (as appropriate) immediately after this Resolution Plan is submitted to the Adjudicating Authority for its approval, and it is prayed that the Corporate Debtor should be permitted to carry forward its unabsorbed business losses notwithstanding a change in the shareholding of the Company pursuant to this Resolution Plan.</p>
41.	<p>Waiver from payment of any stamp duty - It is prayed that all the respective Government Authorities shall waive of any and all stamp duty, filing fees, to such Government Authority or such other amounts payable</p>

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	/ becoming payable on the transaction or actions contemplated under this Resolution Plan.
42.	As the Resolution Plan shall be binding on each of the stakeholders mentioned above, all such Persons including but not limited to the IMA, employees, guarantors, creditors and shareholders/members shall extend their full support to do or cause to be done, such further acts, deeds, matters and things and execute such further documents as may be reasonably required by the Resolution Applicant to give full effect to the terms of this Resolution Plan in accordance with its terms and conditions. If required by the Resolution Applicant as the evidence of discharge, the creditors of the Resolution Plan shall provide all documentation and/or execute documents evidencing the full and final discharge of their Claims.
43.	To pass an order confirming that this Resolution Plan for the Corporate Debtor has dealt with the interests of all the stakeholders in the Corporate Debtor, including the Financial Creditors (whether secured or unsecured, assenting or dissenting), Operational Creditors, Workman and others.
44.	To pass an order directing that in accordance with section 31(1) of the Code, this Resolution Plan shall be binding on the Corporate Debtor together with its employees, members, Creditors (including any assignees and successors), guarantors and all other stakeholders affected by the Resolution Plan and that accordingly, the approval of such employees members, Creditors, guarantors and other stakeholders (including any Governmental Authorities) shall not be separately required to be undertaken, whether before or after the Effective Date, for implementation of various actions proposed to be taken pursuant to this Resolution Plan.

**Analysis and Findings**

43. On hearing the submissions made by the Ld. Counsel for the Resolution Professional, and perusing the record, we find that the revised Resolution Plan dated 13 September 2022 submitted by Jupiter Wagons Limited has been approved with 100% voting share. As per the CoC, the plan meets the requirement of being viable and feasible for revival of the Corporate

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Debtor. By and large, all the compliances have been done by the RP and the Resolution Applicant for making the plan effective after approval by this Bench.

44. On perusal of the documents on record, we are also satisfied that the Resolution Plan is in accordance with sections 30 and 31 of the IBC and also complies with regulations 38 and 39 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
45. We have perused the reliefs, waivers and concessions as sought and as given in Section XIII at Pages 64-71 and Section XVI at Pages 76-83 of the Resolution Plan. While some of the reliefs, waivers and concessions sought by the Resolution Applicant come within the purview of the Code while many others fall under the power and jurisdiction of different government authorities/departments. This Adjudicating Authority has power to grant reliefs, waivers and concessions only with respect to the reliefs, waivers and concessions that are directly in relation to the Code and the Companies Act 2013 (within the powers of the NCLT), and these are granted keeping in mind the object & spirit of the Code. No reliefs, waivers and concessions that fall within the domain of other government department/authorities are granted. The reliefs, waivers and concessions that pertain to other governmental authorities/departments shall be dealt with the respective competent authorities/forums/offices, Government or Semi Government of the State or Central Government with regard to the respective reliefs, waivers and concessions. The competent authorities including the Appellate authorities may consider grant such reliefs, waivers and concessions keeping in view the spirit of the Code.
46. The Resolution Plan should be consistent with extant law. The Resolution Applicant shall make necessary applications to the concerned regulatory or statutory authorities for renewal of business permits and supply of essential services, if required, and all necessary forms along with filing fees etc. and such authority shall also consider the same keeping in mind the objectives of the Code, which is essentially the resolving of the insolvency of the Corporate Debtor.

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47. The reliefs sought with respect to subsisting contracts/agreements can be granted, and no blanket orders can be granted in the absence of the parties to the contracts and agreements.
48. With respect to the waivers with regard to extinguishment of claims which arose Pre-CIRP and which have not been claimed are granted in terms of **Ghanashyam Mishra and Sons Pvt Ltd v Edelweiss Asset Reconstruction Company Ltd**,<sup>6</sup> wherein the Hon'ble Supreme Court has held that once a resolution plan is duly approved by the Adjudicating Authority under sub-section (1) of section 31, the claims as provided in the resolution plan shall stand frozen and will be binding on the Corporate Debtor and its employees, members, creditors, including the Central Govt, any State Govt or any local authority, guarantors and other stakeholders. In this regard we also rely on the judgement of Hon'ble High Court of Rajasthan in the matter of *EMC v. State of Rajasthan* wherein it has been inter-alia held that :

*Law is well-settled that with the finalization of insolvency resolution plan and the approval thereof by the NCLT, all dues of creditors, Corporate, Statutory and others stand extinguished and no demand can be raised for the period prior to the specified date.*

Thus on the date of approval of resolution plan by the Adjudicating Authority, all such claims, which are not a part of resolution plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim, which is not part of the resolution plan. The Hon'ble Supreme Court also held that all the dues including the statutory dues owed to the Central Govt, any State Govt or any local authority, if not part of the resolution plan, shall stand extinguished and no proceedings in respect of such dues for the period prior to the date on which the Adjudicating Authority grants its approval under section 31 could be continued.

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<sup>6</sup> 2021 SCC OnLine SC 313 decided on 13.04.2021.

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49. With respect to the waivers sought in relation to guarantors, the judgment of *Lalit Kumar Jain v Union of India & ors*,<sup>7</sup> wherein the Hon'ble Supreme Court held in para 133 that sanction of a resolution plan and finality imparted to it by section 31 does not *per se* operate as a discharge of the guarantor's liability shall apply.
50. With respect to the reliefs and waivers sought for all inquiries, litigations, investigations and proceedings are granted strictly as per the section 32A of the Code.
51. As far as the question of granting time to comply with the statutory obligations/seeking sanctions from governmental authorities is concerned, the Resolution Applicant is directed to do the same within one year as prescribed under section 31(4) of the Code.
52. In case of non-compliance of this order or withdrawal of Resolution Plan, the CoC shall forfeit the EMD amount already paid by the Resolution Applicant.
53. Subject to the observations made in this Order, the **revised Resolution Plan dated 13 September 2022** submitted by **Jupiter Wagons Limited** is hereby **APPROVED** by this Bench. **The Resolution Plan shall form part of this Order.**
54. The Resolution Plan is binding on the Corporate Debtor and other stakeholders involved so that revival of the Debtor Company shall come into force with immediate effect.
55. The Moratorium imposed under section 14 shall cease to have effect from the date of this order.
56. The Resolution Professional shall submit the records collected during the commencement of the proceedings to the Insolvency & Bankruptcy Board of India for their record and also return to the Resolution Applicant or New Promoters.
57. Certified copy of this Order be issued on demand to the concerned parties, upon due compliance.

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<sup>7</sup> 2021 SCC OnLine SC 396 decided on 21.05.2021.

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58. Liberty is hereby granted for moving any Application if required in connection with implementation of this Resolution Plan.
59. A copy of this Order is to be submitted in the Office of the Registrar of Companies, West Bengal.
60. The Resolution Professional shall stand discharged from his duties with effect from the date of this Order. The pending avoidance applications shall be pursued further by the Financial creditors, who are the proposed beneficiaries of such transactions in the Resolution Plan.
61. The Resolution Professional is further directed to handover all records, premises/factories/documents to the Resolution Applicant to finalise the further line of action required for starting of the operation. The Resolution Applicant shall have access to all the records/premises/factories/documents through the Resolution Professional to finalise the further line of action required for starting of the operation.
62. **IA (IB) No. 1387/KB/2022 is hereby dismissed and I.A. (IB) No. 1335/KB/2022 and main Company Petition i.e., CP (IB) No. 565/KB/2020 shall stand disposed of accordingly.**
63. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.
64. Certified copy of this order may be issued, if applied for, upon compliance of all requisite formalities.
65. File be consigned to the record.

**Balraj Joshi**  
**Member (Technical)**

**Rohit Kapoor**  
**Member (Judicial)**

Order signed on the 8<sup>th</sup> day of June, 2023

GGRB\_LRA